

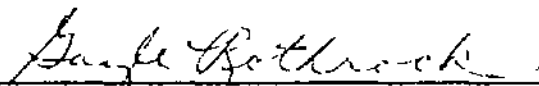
ORDER

The Washington State Department of Ecology Order granting Application No. G3-24776 for a permit to appropriate public ground water is affirmed.

DATED this 24th day of October, 1984.

POLLUTION CONTROL HEARINGS BOARD

 10/19/84
LAWRENCE J. FAULK, Vice Chairman


GAYLE ROTHROCK, Chairman

1 such applicant shall acquire same by purchase or
2 condemnation under RCW 90.03.040, said supervisor may
3 thereupon grant such permit. Any application may be
4 approved for less amount of water than that applied
5 for, if there exists substantial reasons therefor,
6 and in any event shall not be approved for more water
7 than can be applied to beneficial use for the
8 purposes named in the application. In determining
9 whether or not a permit shall issue upon any
10 application, it shall be the duty of the supervisor
11 to investigate all facts relevant and material to the
12 application....

13 The Department properly reviewed the application and issued a
14 customary Report of Examination.

15 V

16 The burden of proof is on the appellant to show that DOE's
17 appropriation decision was in error.

18 VI

19 Appellant failed to present persuasive evidence and argument which,
20 could result in her meeting her burden of proof. The Department, on
21 the other hand, presented ample testimony which affirmatively showed
22 that 1) there was unappropriated water available for additional
23 irrigation use, 2) existing rights would not be impaired if the
24 proposed appropriation were allowed, and 3) the project would not be
25 detrimental to the public welfare. RCW 90.03 and 90.54.

26 VII

27 The approval of application No G3-24776 should be affirmed.

VIII

Any Finding of Fact which should be deemed a Conclusion of Law is
hereby adopted as such.

From these Conclusions the Board enters this

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III

Chapter 90.44 RCW deals with the regulation of public ground waters. RCW 90.44.020. The application procedure for the appropriation of public ground water is defined in RCW 90.44.060. Respondent has followed the proper application procedure.

IV

RCW 90.03.290, made applicable by RCW 90.44.060, provides in part:

When an application complying with the provisions of this chapter and with the rules and regulations of the supervisor of water resources has been filed, the same shall be placed on record in the office of the supervisor, and it shall be his duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the supervisor shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation.... The supervisor shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if he shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, he shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: Provided, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is not unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the supervisor to reject such application and to refuse to issue the permit asked for. If the permit is refused because of conflict with existing rights and

1 permit would not be contrary to the public interest. Therefore,
2 Application No. G4-24776, as amended, was approved on June 13, 1984.

3 VII

4 Feeling aggrieved by the decision of DOE, appellant filed an
5 appeal with this Board on July 2, 1984, and the matter came to formal
6 hearing.

7 VIII

8 The question to be decided by this Board is whether DOE was
9 correct in approving respondent's application for irrigation of 261
10 acres from ground water sources.

11 IX

12 Any Conclusion of Law which should be deemed a Finding of Fact is
13 hereby adopted as such.

14 From these Findings of Fact, the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 The Board has jurisdiction over the persons and subject matter of
18 this proceeding. RCW 43.21B.110.

19 II

20 The legislature has found that, subject to existing rights, all
21 waters within the state belong to the public and any right thereto
22 shall be acquired to appropriate for a beneficial use in the manner
23 provided and not otherwise. As between appropriators, the first in
24 time shall be the first in right. RCW 90.03.010.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-173

1 Thus, if this application for irrigation of 261 acres were
2 granted, respondent would be entitled to irrigate a total of 816
3 acres. This is the same amount of acreage irrigated since 1977.

4 V

5 Appellant contends that her domestic water supply drops during
6 irrigation by respondent. She illustrated this point by saying that
7 it requires seven hours to fill her cistern when respondent is
8 irrigating and only five hours when he is not irrigating. Appellant's
9 well is 2.5 miles south of respondent's project. As a result she
10 deepened her well in 1962. She feels it is not fair to force domestic
11 water users to drill deeper wells because irrigation projects consume
12 water.

13 VI

14 On March 21, 1978, and March 27, 1984, representatives of DOE
15 conducted field investigations on respondent's parcel including
16 measurement of static water levels in order to determine whether to
17 approve or deny his application. A report of examination was filed
18 and approved by the Department's regional supervisor. The conclusions
19 reached in the reports stated that these measurements do not show any
20 significant annual decline in the regional water table as a result of
21 irrigation. However, during the irrigation season the regional
22 aquifer system may drop a few feet due to pumping, but historically
23 have recovered as soon as irrigation ceases. As a result the DOE
24 determined that if the appellant's proposed use was developed, it
25 would have no adverse effect on existing rights and granting this

1 Washington. Respondent Arnold Moeller represented himself.

2 Witnesses were sworn and testified. Exhibits were admitted and
3 examined, and oral argument was heard. From the testimony, evidence
4 and contentions of the parties, the Board makes these

5 FINDINGS OF FACT

6 I

7 On February 3, 1976, respondent Arnold Moeller filed application
8 No. G3-24776 with DOE to appropriate public ground waters. Public
9 notice was made, and during the 30-day protest period, protests from
10 appellant and others were received by DOE to the granting of this
11 request.

12 II

13 Application No. G3-24776, as amended, requested 620 gallons per
14 minute (gpm) from two wells for irrigation of 261 acres. This water
15 was to be used on appellant's approximately 816-acre parcel located in
16 the N 1/2 of Section 17, all of Sections 8 and 9 in Township 18 N.,
17 Range 37 E.W.N. in Adams County.

18 III

19 Respondent's parcel is located nine miles southwest of the City of
20 Ritzville and two miles north of Marengo.

21 IV

22 Presently, respondent holds two certificates of water right;

23 (a) Certificate No. 5378 enables respondent to
24 irrigate 460 acres

25 (b) Certificate G3-009480 enables respondent to
26 irrigate 155 acres.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 84-173

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
WILLARD and PATRICIA HENNINGS,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, and
ARNOLD H. and CURTIS MOELLER,

Respondents.

PCHB No. 84-173

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a Washington State Department of Ecology Report of Examination and Order granting Ground Water Permit Application No. G3-24776, came before the Pollution Control Hearings Board; Lawrence J. Faulk, presiding officer, and Gayle Rothrock, for formal hearing on October 1, 1984, in Spokane, Washington. The proceedings were recorded by Denise Micka.

Appellant, Patricia Hennings of Ritzville, Washington, represented herself. Respondent Department of Ecology (DOE) was represented by Charles K. Douthwaite, Assistant Attorney General for DOE at Olympia,